

**BANKRUPTCY APPELLATE PANEL
OF THE SIXTH CIRCUIT**

FILED
Apr 22, 2022
DEBORAH S. HUNT, Clerk

In re: INTERLOGIC OUTSOURCING, INC.,)
)
 Debtor.)
)
 _____)
 ONESOURCE VIRTUAL, INC.,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 INTERLOGIC OUTSOURCING, INC.;)
 PRIMEPAY, LLC,)
)
 Defendants-Appellees.)

O R D E R

Before: GUSTAFSON, MASHBURN, and STOUT, Bankruptcy Appellate Panel Judges.

The Appellant disputes part of the reasoning in a bankruptcy court abstention decision but does not seek reversal of the abstention decision itself. The Appellant is therefore pursuing an appeal without an appealable issue. On that basis, the appeal must be dismissed.

Appellant OneSource Virtual, Inc., the plaintiff in the adversary proceeding below, appeals a Judgment of the United States Bankruptcy Court for the Western District of Michigan dismissing the adversary proceeding and the court’s accompanying Memorandum of Decision and Order in which the court granted a motion requesting the court permissively abstain from determining the merits of the case. Appellant opposed the motion to abstain before the bankruptcy court but did not challenge on appeal the court’s decisions to abstain and dismiss the adversary proceeding.

Instead, Appellant only requests review of certain legal conclusions underlying the bankruptcy court's decision to abstain.

Appellee PrimePay, LLC contests the Bankruptcy Appellate Panel's (the "Panel") jurisdiction to review the abstention order. The Panel is also obliged to consider for itself whether it may exercise jurisdiction over an appeal. *BNI Telecomms., Inc. v. Lomaz (In re BNI Telecomms., Inc.)*, 246 B.R. 845, 848 (B.A.P. 6th Cir. 2000) ("The Panel, like all federal courts, is obligated to determine its own subject matter jurisdiction.").

Generally, the Panel has jurisdiction to review a bankruptcy court's decision to abstain permissively under 28 U.S.C. § 1334(c)(1). *Litton Loan Servicing, L.P. v. Schubert*, 631 B.R. 868, 878 (N.D. Ohio 2021). Section 1334(d) provides that

[a]ny decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2) [i.e., a decision on mandatory abstention]) is not reviewable by appeal or otherwise by the court of appeals under section[s] 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

Id. That provision has been interpreted to mean that circuit-level courts of appeal lack jurisdiction to review a bankruptcy court's decision to abstain. *Harris v. Cooley (In re Harris)*, 812 F. App'x 358, 359 (6th Cir. 2020); *Baker v. Simpson*, 613 F.3d 346, 352 (2d Cir. 2010). However, § 1334(d) does not restrict a district court or bankruptcy appellate panel's review of a bankruptcy court's decision to abstain permissively. *Litton Loan Servicing*, 631 B.R. at 878; *Labankoff v. GMAC Mortg., LLC*, 2010 WL 2384543, at *3 (B.A.P. 9th Cir. June 14, 2010); *In re Armstrong*, 305 B.R. 381, 2004 WL 73364, at *1 (B.A.P. 10th Cir. 2004). The Panel has jurisdiction to review a bankruptcy court's final judgment or order pursuant to 28 U.S.C. § 158(a). *Litton Loan Servicing*, 631 B.R. at 878.

Even though the Panel has general jurisdiction to review a permissive abstention decision, there still must be an appealable issue and appellate standing. The impediment in this case is that Appellant does not challenge the bankruptcy court's decision to abstain but only some of the court's rationale. Appellant in its statement of issues did not claim error as to the bankruptcy court's decision to abstain, and Appellant expressly admitted in its reply brief that it did not appeal the court's decision to abstain. (Reply at 8–9, ECF No. 24.) Appellant merely appealed what it defined as “three conclusions of law” that influenced the bankruptcy court's decision. (*Id.* at 9.) Rationales and dicta do not cause the type of injury or create the type of controversy that appellate courts address.

Article III standing applies “to adversary proceedings brought in bankruptcy courts, even though bankruptcy courts are not Article III courts themselves.” *Rosenfeld v. Rosenfeld (In re Rosenfeld)*, 698 F. App'x 300, 303 (6th Cir. 2017) (citing *Stevenson v. J.C. Bradford & Co. (In re Cannon)*, 277 F.3d 838, 852–54 (6th Cir. 2002)). To have constitutional standing, the plaintiff must establish that: (1) it suffers “an injury in fact” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) there is a causal connection between the injury and the conduct fairly traceable to the challenged action; and (3) it is likely, as opposed to speculative, that the injury will be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 2136 (1992).

“Someone who seeks an alteration in the language of the opinion but not the judgment may not appeal.” *United States v. Accra Pac, Inc.*, 173 F.3d 630, 632 (7th Cir. 1999). Appellate courts do not review a lower court's reasoning or opinions, they review the judgment. *Jennings v. Stephens*, 574 U.S. 271, 277, 135 S. Ct. 793, 799 (2015). “The question before an appellate Court is, was the judgment correct, not the ground on which the judgment professes to proceed.” *Tyler*

v. Anderson, 749 F.3d 499, 510 (6th Cir. 2014) (quoting *McClung v. Silliman*, 19 U.S. 598, 603 (1821)).

Adverse dicta “can cause harm, but not the sort of harm that the courts, in an effort to limit litigation, deem to create a genuine controversy within the meaning of Article III of the Constitution.” *Chathas v. Loc. 134 Int’l Bhd. of Elec. Workers*, 233 F.3d 508, 512 (7th Cir. 2000). The prohibition against review of adverse dicta or rationale is usually presented in the context of an appeal by a prevailing party. But the prohibition applies equally when the non-prevailing party does not appeal the ultimate decision or action taken in the order on appeal. *See e.g., Texas v. Hopwood*, 518 U.S. 1033, 116 S. Ct. 2581, 2582 (1996) (Mem.) (dismissing a petition for writ of certiorari that did not challenge the lower court’s judgment, only the court of appeals’ rationale). In this case, the Panel cannot review the bankruptcy court’s rationale divorced from review of the court’s decision to abstain.

Because Appellant has not requested review of the bankruptcy court’s decision to abstain, but instead expressly limited the appeal to a portion of the court’s rationale, appellate review is not appropriate. Accordingly, the appeal is hereby **DISMISSED**.

ENTERED BY ORDER OF THE PANEL



Deborah S. Hunt, Clerk